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No. 90-524

In The
Supreme Court Of The United States

OCTOBER TERM, 1990

STATE OF CONNECTICUT,
Petitioner,

v.

MARTIN GEISLER,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF CONNECTICUT

RICHARD EMANUEL
c/o Office of Chief
Public Defender
121 Elm Street
New Haven, CT 06510
(203) 789-7477

Counsel for Respondent

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66 Connecticut Boulevard
East Hartford, CT 06108
528-4554

QUESTIONS PRESENTED

I. Whether this Court should review a state court's fact-bound determination involving the "emergency exception" to the warrant requirement, where the state court utilized the same emergency doctrine that has been adopted by this Court?

II. Whether a state appellate court is required to apply the principles of *New York v. Harris*, ____ U.S. ____, 110 S.Ct. 1640, 109 L.Ed.2d 13 (1990), to a case that is distinguishable from *Harris* in significant respects?

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF CONNECTICUT

Respondent, Martin Geisler, respectfully asks this Court to deny the State of Connecticut's petition seeking review of the judgment and opinion of the Connecticut Appellate Court, entered in this proceeding on May 11, 1990.

OPINION BELOW

The opinion of the Connecticut Appellate Court is reported at 22 Conn. App. 142, 576 A.2d 1283 (1990), and is reproduced in the Appendix to the State of Connecticut's

Petition for a Writ of Certiorari, at A1–A34. The Connecticut Supreme Court's denial of the State of Connecticut's petition for certification is reported at 215 Conn. 819, 576 A.2d 547 (1990), and is reprinted in the state's appendix at A35.

JURISDICTION

The State of Connecticut has invoked this Court's jurisdiction under 28 U.S.C. § 1257.

COUNTER-STATEMENT OF THE CASE

The state's "statement of the case" is essentially correct. However, certain additional facts should be noted, in order to provide this Court with a more complete understanding of why this case is *not* worthy of this Court's discretionary jurisdiction.

When police first arrived at the accident scene, the "victim described the driver of the Peugeot as an older man with gray hair and glasses. [The victim] gave *no* indication that the driver was *injured* or appeared intoxicated." (Emphasis added.) *State v. Geisler,* supra, 22 Conn. App. at 145.

About twenty minutes after the accident, officer Michael Barrett of the Westport police department was dispatched to check driveways on Bayberry Lane in an effort to locate the suspect vehicle (a red Peugeot station wagon). He observed such a vehicle in a driveway adjacent to a house on Bayberry Lane, approximately one mile from the accident scene. Upon checking the vehicle registration, he confirmed that that vehicle was registered under the name of Geisler at that Bayberry Lane address.

As described in the state's petition, at p. 5, Officer Barrett made certain visual observations of the exterior of the Peugeot. Barrett also looked into the interior of the vehicle:

there was no blood *inside* the car, no blood leading from the car to the house, and the windshield of the Peugeot was not cracked.

In response to Barrett's broadcast that he had located the suspect vehicle, officer Gordon Hiltz, who was in a separate patrol vehicle, responded to the Bayberry Lane address. When Hiltz arrived, he checked the Peugeot's radiator, which was warm, and made the same observations that Barrett had made. Hiltz also looked *inside* the car, but saw neither blood *nor any other evidence of injuries.* Hiltz noticed that the windshield was not cracked, and that there was no blood leading from the car. Hiltz acknowledged that the Peugeot was damaged, but not disabled.[1]

Barrett and Hiltz did not see anyone outside, and they walked around the perimeter of the house. They then went up on the front porch. They noticed that the "inner front door was open, but the outer screen door was closed." *State v. Geisler,* supra, 146. They rang the doorbell, knocked, and shouted through the screen door into the house, but got no response. They also checked the rear door and the garage doors to make sure there was no sign of forced entry.

The officers then decided to enter the house based on what they believed to be an "exigent circumstance": the *possibility* that the operator of the Peugeot had been injured, and *might* need assistance. See *State v. Geisler,* 146. Hiltz testified that he and Barrett "discussed the possibility of someone being injured from the car accident and that was the circumstance[s] we entered for." Hiltz conceded that, apart from the exterior damage to the Peugeot, the officers had *not*

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[1] In fact, the Connecticut Appellate Court noted that "'[t]he evidence, including the photographs entered as exhibits, *fails* to indicate that the damage was severe." (Emphasis added.) *State v. Geisler,* 152 n. 4.

observed anything to indicate that the operator was, or might have been, injured.[2]

The officers entered the house, into the kitchen. They called out but received no response. From the kitchen, they could see across a hallway into a bedroom, where someone was lying on a bed. They walked into the bedroom, where they found respondent, fully clothed, either asleep or unconscious on the bed. There was an odor of alcohol in the room.

The officers shook respondent "to see if he was all right." Respondent awoke, and when asked, he replied that he was all right. Respondent had no visible injuries and didn't complain of any, and the officers were satisfied that "he was not injured" from the accident.

Barrett, who was in uniform, then asked respondent if he had been drinking, and respondent answered yes. While still in the bedroom, Barrett also asked him if the Peugeot was his vehicle, whether he had been operating it, and when he last operated it. Barrett conceded that once the officers entered the bedroom, respondent would not have been free to leave. (The "bedroom" questions and answers preceded any *Miranda*[3] warnings, *State v. Geisler*, supra, 147, and were not offered into evidence at respondent's trial.)

The officers then asked respondent to accompany them outside, and respondent (who was already in "custody" in

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[2] If the officers had actually perceived a medical-emergency need for the warrantless entry, presumably the officers' police report would have mentioned that fact. However, Officer Barrett's report makes absolutely no mention of the "injured operator" theory for the home entry. The only reason that is contained in his report is a "burglary" theory, i.e., that the Peugeot had been stolen, and the thief was burglarizing the house. Both officers, however, testified that this "burglary" theory was rejected before they entered the house.

[3] *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

his own bedroom) complied with their request.[4] Outside the house, he was asked additional questions, formally placed under arrest, and advised of his rights.

At the Westport police department, a videocamera had been set up in advance to make an audiovisual recording of the respondent when he was brought into headquarters and questioned. The police videotaped respondent performing certain agility tests, and answering certain questions. In addition, an intoximeter test was administered, with respondent's consent.

Prior to the start of trial, respondent moved to suppress the results of the intoximeter test, the statements he made to the police, and the videotape. At an evidentiary hearing on the motion to suppress, the parties stipulated that: (1) probable cause existed for respondent's arrest at the time of the warrantless entry, and (2) that respondent was arrested inside his home, by police who entered without a warrant. One factor which the parties omitted from their stipulation was that the probable cause which existed was for a *misdemeanor* arrest.[5]

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[4] The state's petition states that respondent "willingly followed the officers out of the residence." Pet. for Cert., at 6. If the state is implying that respondent voluntarily left his house, it is an implication that is clearly refuted by the record. In fact, at the suppression hearing in the trial court, the state *stipulated* that respondent was arrested *in* his house by officers entering without a warrant. And, of course, Officer Barrett conceded that respondent was not free to leave the bedroom. See *State v. Geisler*, supra, 148.

[5] On the day of the accident, respondent was issued a "misdemeanor summons and complaint," charging respondent with the commission of three misdemeanors. About one month later, an information was filed, again charging him with three misdemeanors. It was not until October of 1986 that a substitute information was filed, charging respondent for the first time with a felony offense.

Thus, if the officers had entered respondent's home for the purpose of arresting him, their action would have been both *Payton*ly illegal (*Payton v. New York*, 455 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 636 (1980), and

(continued)

At the conclusion of the evidentiary hearing, the trial court found that there were "exigent circumstances" which justified the warrantless home entry by the police. According to the trial court, the "exigent circumstances" included the fact that respondent might attempt to flee; that evidence might be destroyed; and that reasonably well-trained officers would believe that respondent's "life was endangered." *State v. Geisler,* supra, 148. In addition, the trial court concluded that, even if there were no exigent circumstances for the warrantless home entry, the videotape, the intoximeter results, and the respondent's statements were not the "fruits of an illegal arrest," and were therefore admissible. Id., 148.

Following his conviction by a jury on three offenses,[6] respondent appealed to the Connecticut Appellate Court, where the case was heard *en banc.* On appeal, the state "conceded" and the Appellate Court "agree[d]" that there was "*no* support for the [trial] court's findings regarding the risks of destruction of evidence and the [respondent's] flight, and that such findings cannot be justified on appeal." Id., 148. Thus, the Appellate Court only needed to address the issue of whether the police reasonably believed that the respondent's life was in danger. With regard to this question, the Appellate Court agreed, with the parties on appeal, that the trial court had "confused 'exigent circumstances' with the 'emergency doctrine' in concluding that the warrantless entry was justified." Id., 149.

In a five to three decision, the Appellate Court concluded that the officers were not justified in their warrantless entry

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[5] *(continued)*
patently illegal. See *Welsh v. Wisconsin,* 466 U.S. 740, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984) (noting that Connecticut is among those states which have "refused to permit warrantless home arrests for nonfelonious crimes.").

[6] Respondent was convicted of operating under the influence, Conn. Gen. Stat. § 14-227a(a)(2); assault in the second degree with a motor vehicle while intoxicated, Conn. Gen. Stat. § 53a-60d; and evading responsibility, Conn. Gen. Stat. § 14-224(a).

of respondent's home. The majority reached that conclusion by applying the "emergency doctrine" (discussed infra) to the facts of this case, e.g., the fact that "there was neither *evidence* of a severely damaged vehicle nor of an injured driver" and the fact that "the victim provided no information supporting the belief that the driver was injured and in need of assistance." (Emphasis added.) Id., 151-152. With regard to the police officers' observations at respondent's home (e.g., keys in ignition, car door ajar, and "inner door of the house open with the outer screen door shut on a July afternoon"), the Court held that "[n]othing from these facts could be reasonably said to provide a basis for believing that the driver was injured to the point of needing immediate aid." Id.

Having concluded that the warrantless entry of respondent's home was illegal, the Appellate Court then held that the evidence derived therefrom was the "tainted product of an illegal arrest," and should have been suppressed. Id., 158-159.

REASONS FOR DENYING THE PETITION

I. THE CONNECTICUT APPELLATE COURT'S DECISION DOES NOT IN ANY WAY CONFLICT WITH THIS COURT'S PRINCIPLES RELATING TO THE "EMERGENCY" DOCTRINE.

The vacuousness of the state's argument on the "emergency" exception to the warrant requirement can readily be demonstrated. The state claims that the Connecticut Appellate Court's decision "unreasonably inhibits police from attempting to render emergency aid to people who may be in need of such assistance" and thus "[t]he decision therefore *conflicts* with principles set forth by this Court in *Mincey v. Arizona*, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978)." (Emphasis added.) Pet. for Cert., at 10. That "conflict" is simply *non-existent.*

As the state acknowledges, under the emergency exception recognized in *Mincey v. Arizona*, supra, police may engage in "warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid." Id., 437 U.S. at 392; Pet. for Cert., at 10–11 (quoting same language, without the quotation marks). The state fails to point out that both the Connecticut Supreme Court and the Connecticut Appellate Court *have adopted an emergency exception that is indistinguishable* from the exception recognized in *Mincey v. Arizona.* Consider:

1. "The [United States Supreme] court held [in *Mincey v. Arizona*] that the fourth amendment does not bar police officers, when responding to emergencies, from making warrantless entries into premises and warrantless searches when they reasonably believe that a person within is in need of immediate aid." *State v. Magnano*, 204 Conn. 259, 266, 528 A.2d 760 (1987) (adopting the *Mincey* standard).

2. "Thus, the test to be employed in [emergency exception] cases such as the present one is whether, under the

totality of the circumstances, a well-trained police officer reasonably would have believed that a warrantless entry was necessary to assist a person inside in need of immediate aid." *State v. Klauss,* 19 Conn. App. 296, 302, 562 A.2d 558 (1989).

3. "This court recently described the test to be employed in 'emergency doctrine' cases as 'whether, under the totality of the circumstances, a well-trained police officer reasonably would have believed that a warrantless entry was necessary to assist a person inside in need of *immediate* aid.' " (Emphasis in original.) *State v. Geisler,* supra, 142.

It appears that the State of Connecticut is asking this Court to impose upon the Connecticut courts a principle of law which the Connecticut courts have already willingly embraced.

Only three other brief points need to be made. First, the state contends that Connecticut requires "*conclusive* evidence that an emergency in fact existed" before police can be found to have acted reasonably. (Emphasis in original.) See Pet. for Cert., at 12–13 and n. 4. The state is wrong once again. The *Geisler* court specifically noted that "[t]he reasonableness of a police officer's determination that an emergency exists is evaluated on the basis of facts known *at the time of entry.*" *State v. Geisler,* supra, 149–150. The *Geisler* court found, however, that officer Hiltz' "belief" that respondent was in need of immediate aid was simply "not supported by the evidence and, accordingly, does not comport with the reasonable actions of a well trained officer under the totality of the circumstances of the present case." Id., 150. In short, "[t]he evidence in this case does not justify a reasonable belief that the defendant's medical condition manifested itself in such a traumatic fashion . . . as would require the officers' immediate entry into the home." Id., 153.

The second point is that since Connecticut's emergency exception is completely consistent with this Court's pronouncements on the subject, any perceived conflicts

between other jurisdictions and this Court would have no effect on the disposition *of this case.* (Yet, under any of the emergency doctrine formulations discussed in the state's petition, the result in this case would have been the same, i.e., an unlawful entry.)

Third, and finally, almost any inquiry involving the Fourth Amendment, or an exception thereto, is inherently fact-bound. This case is no exception. Indeed, the Appellate Court described this case as "*unique* in that it *differs factually* from the great majority of the 'emergency doctrine' cases that involve common emergency situations. . . ." (Emphasis added.) *State v. Geisler,* 151. Thus, the present case involves only the application of settled legal principles — neither novel, unusual, nor inconsistent with this Court's precedents — to an unusual factual situation. The first question presented is not worthy of a grant of certiorari.

II. THE APPELLATE COURT'S CONCLUSION THAT THE DERIVATIVE EVIDENCE SHOULD HAVE BEEN SUPPRESSED IS NOT CONTRARY TO THIS COURT'S OPINION IN *NEW YORK V. HARRIS.*

The state has also asked this Court to remand this case to the Connecticut Appellate Court for reconsideration in light of *New York v. Harris,* ____ U.S. ____, 110 S. Ct. 1640, ____ L.Ed.2d ____ (1990). There is no need, and no justification, for such a remand.

The state contends that "[t]he holding in *Geisler* is clearly contrary to this Court's holding in *Harris.*" Pet. for Cert., at 17. The *Harris* decision was released approximately three weeks prior to the release, on May 11, 1990, of the decision in *State v. Geisler,* supra. This Court should assume that the Appellate Court was aware of *Harris* when *Geisler* was released, and that the Connecticut Supreme Court was equally cognizant of *Harris* when it later denied the state's petition for certification to appeal (on June 29, 1990).

Obviously, both of Connecticut's reviewing courts concluded that *Geisler* was not contrary to *Harris*, and there was ample justification for that conclusion.

Stated briefly, *Harris* holds that "where the police have probable cause to arrest a suspect, the exclusionary rule does not bar the State's use of a statement made by the defendant outside of his home, even though the statement is taken after an arrest made in the home in violation of *Payton* [*v. New York*, supra]." *New York v. Harris*, supra, 1644–45. But *Harris* should not be oversimplified. The present case, unlike *Harris*, does not involve the taking of a statement at some point in time following a warrantless felony arrest in the home. First, as indicated earlier in this brief, see n. 5, supra, respondent was arrested on misdemeanor charges only, making the warrantless entry (for purposes of Fourth Amendment "fruits" analysis) more egregious than a "standard" *Payton* violation. Second, in this case, the state reaped direct and substantial benefits from its wrongdoing. The illegal entry plainly enabled the state to seize respondent's *person* (which was in a very real sense one of the fruits of the illegal conduct) under circumstances in which *time* was the state's enemy. From respondent's perspective, the most damaging of the "fruits" evidence was the intoximeter test and the videotape of his performing the agility tests. Since the state was *only* able to secure this "evanescent" evidence by an illegal warrantless entry and seizure of the respondent, this case presents a rather clear case of exploitation of an illegality.[7] Because this case is clearly distinguishable from *Harris*, the state's request for a remand for reconsideration should be denied.

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[7] The Appellate Court noted that the state conceded on appeal that "the time period between the arrest and the defendant's station house statements and consent to take the intoximeter test was minimal." *State v. Geisler*, supra, 156. And, of course, the videotape began taping the respondent when he entered the police station. The Appellate Court found "that there existed a continuum of police action from that [illegal] entry until the development of the derived evidence," and that the illegal police conduct could not be "excused" under a " 'good faith' " analysis. Id., 158.

CONCLUSION

The decision of the Connecticut Appellate Court was consistent with the decisions of this Court. Accordingly, the State of Connecticut's petition for a writ of certiorari should be denied.

Respectfully Submitted,

MARTIN GEISLER
Respondent

BY: RICHARD EMANUEL
c/o Office of Chief
Public Defender
121 Elm Street
New Haven, CT 06510
(203) 789-7477

Counsel for Respondent